

**BILL NUMBER: AB 963 (Bonilla) as amended July 1, 2015**

**SUMMARY**

AB 963 clarifies the definition of service that can be reported to CalSTRS and includes CalSTRS membership for those in partial certificated positions. This bill also remedies membership issues for individuals in classified positions who were erroneously reported to CalSTRS and revises the definition of “compensation earnable” for outgrowth activities.

**BOARD POSITION**

**Sponsor.** This bill ensures more effective and efficient administration of the retirement plan and helps alleviate confusion among employers on how to determine what service is creditable to CalSTRS.

**REASON FOR THE BILL**

Some employers have erroneously reported service to CalSTRS due to confusion surrounding the definition of “creditable service” in the Teachers’ Retirement Law. Due to this perceived vagueness, individuals have been removed from CalSTRS or have had service incorrectly reported to a different public retirement system. Additionally, CalSTRS has found that determining compensation earnable for outgrowth activities is administratively burdensome for employers.

**SUMMARY OF AMENDMENTS**

The July 1, 2015, amendments:

- Revise the definition of “compensation earnable” for outgrowth activities to be an amount calculated annually by CalSTRS using the average compensation earnable of all active members during the fiscal year ending in the previous calendar year.
- Clarify that a prekindergarten through grade 12 employer includes the state.
- Make clear that specified work that does not meet Commission on Teacher Credentialing certification qualifications or California Community Colleges Board of Governors minimum standards must be linked to creditable service activities.
- Ensure the work of consulting teachers participating in the Peer Assistance and Review Program for Teachers is considered creditable service.
- Allow individuals performing service in a partial certificated full-time position on a part-time basis to have their service entirely creditable to CalSTRS.

**ANALYSIS**

**Existing Law:**

Existing law requires that employers, including the state, report creditable service performed by employees based on a list of activities. The state may have individuals performing creditable service at entities such as the School for the Deaf, the School for the Blind or the Department of Corrections and Rehabilitation. Among the activities

listed as creditable service are school activities related to, and an outgrowth of, the instructional and guidance program of the school when they are performed in addition to other creditable service. Compensation earnable for these outgrowth activities is determined as if the creditable compensation is earned at the lowest pay rate for other creditable service activities that the member performs for the same employer during the same year. The law is silent on how employers report partial certificated positions in which a person performs both creditable service and service not creditable to CalSTRS.

Employees reported to CalSTRS must adhere to credentialing requirements adopted by the Commission on Teacher Credentialing, minimum standards adopted by the California Community Colleges Board of Governors or provisions required under an approved charter for the operation of a charter school. The work of superintendents is excluded from these requirements. In addition, if a CalSTRS member is hired in a position to perform activities not creditable to CalSTRS, he or she can elect in writing within 60 days from the date of hire to stay in CalSTRS, as specified.

**This Bill:**

AB 963 continues the same requirements, while clarifying and adding criteria to the definition of “creditable service” to help with those who may have been erroneously reported to CalSTRS. The bill also provides guidance for making an election for those who have been misreported.

This bill reorganizes the definition of “creditable service” for the Defined Benefit (DB) Program and the Cash Balance (CB) Benefit Program to clarify the certification qualifications, minimum standards and other requirements that need to be met in order to perform creditable service for prekindergarten through grade 12, including the state, community college and charter school employers.

The definition includes activities to align with other sections in the Education Code. One addition to the list is activities connected with the enforcement of laws relating to compulsory education and child welfare activities. One example of a position performing these activities would be a truant officer. A second addition is mentoring, which includes program support providers and coaches working in teacher and administrator preparation and induction programs approved by the Commission on Teacher Credentialing.

The bill clarifies that outgrowth activities do not require a credential and are only creditable when they are performed for the same employer for which the member is performing creditable service. The bill also revises the definition of “compensation earnable” for outgrowth activities to be an amount calculated annually by CalSTRS using the average compensation earnable of all active members during the fiscal year ending in the previous calendar year.

The definition also specifies that the work of community college presidents and chancellors is creditable service along with the work of superintendents currently in statute. Because certification qualifications are not established by the Commission on Teacher Credentialing, the work of consulting teachers participating in the Peer Assistance and Review Program for Teachers is also specifically included. The bill

makes clear that these types of work, without commission- or board-specified certification qualifications or minimum standards, must be linked to creditable service activities.

The reorganization also confirms that the activities of human resources administrators in prekindergarten through grade 12 and community colleges are considered creditable to CalSTRS. The clarification of the credential and minimum qualification requirements, along with the list of activities in the definition of "creditable service," reduces the chances employers will misreport service in the future.

AB 963 provides guidance on how employers report individuals in partial certificated positions. The bill codifies that all activities performed in a full-time position are deemed creditable service if more than 50 percent of the activities performed are creditable service. Individuals in such positions, performing service on either a part-time or full-time basis, would remain CalSTRS members until they become employed in a different position. The bill also specifies that these individuals have the full rights of a CalSTRS member to elect to retain membership through the regular 60-day process as specified in current statute if, in the future, they perform creditable service in a different position with the same or a new employer.

With these new criteria in the definition of "creditable service," CalSTRS, upon request, can ask employers to provide the percentage of time creditable service is performed in a position or information regarding the requirements that need to be met in order to perform creditable service.

In addition, AB 963 offers a remedy for individuals whose employers have erroneously reported their service to CalSTRS. The bill provides that the service of these individuals is creditable to the DB Program if the service was performed on or before December 31, 2015, and reported to CalSTRS as creditable service.

If individuals whose service is deemed creditable are CalSTRS members, including those who retired on or before December 31, 2015, they may elect to have that service covered by a different public retirement system. If individuals had service removed from CalSTRS, including those receiving a benefit on or before December 31, 2015, they may elect to have that service covered by the DB Program. If an election is made to have service covered by the DB Program, the individual is a CalSTRS member and has all rights of a member, including electing to stay in CalSTRS if he or she is hired into a position that requires membership in a different public retirement system as specified in current statute.

AB 963 adds stipulations for individuals who make an election based on service that is deemed creditable. If a CalSTRS member elects to have service moved to a different public retirement system, any member contributions, credited interest and employer contributions, less amounts already paid to the individual, shall be returned to the employer. Furthermore, any amounts due to CalSTRS shall be collected from the individual before he or she can be covered by another public retirement system. For those who had service removed from CalSTRS and elect to have their service covered

by the DB Program, that service and employee and employer contributions shall be reported and remitted to CalSTRS according to current statute.

All individuals who make such an election maintain their status pursuant to the California Public Employees' Pension Reform Act of 2013 (PEPRA). This election shall only be made by the individual who performs service deemed creditable and must be made on or before June 30, 2016. If no election is made, all service remains in the retirement system under which the individual is currently covered. Lastly, this bill makes conforming changes to references.

## LEGISLATIVE HISTORY

SB 1220 (Torres, Chapter 755, Statutes of 2014) made various technical, conforming or minor changes to the Teachers' Retirement Law to facilitate efficient administration of the State Teachers' Retirement Plan, including specifying how to determine compensation earnable for outgrowth activities.

AB 1381 (PER&SS, Chapter 559, Statutes of 2013) made various technical corrections and conforming changes that align the Teachers' Retirement Law with the provisions of PEPRA, as enacted in AB 340 (Furutani), including adding the definition of "retired member activities" for the CB Benefit Program.

AB 340 (Furutani, Chapter 296, Statutes of 2012) made various changes to the CalSTRS benefit structure that affect all CalSTRS members, including adding the definition of "retired member activities" for the DB Program.

AB 2700 (Lempert, Chapter 1021, Statutes of 2000) made all compensation for creditable service creditable to CalSTRS and credited member and employer contributions for service in excess of 1.000 years of service per school year to the Defined Benefit Supplement (DBS) Program.

AB 2673 (Ducheny, Chapter 608, Statutes of 1996) amended the CB Benefit Program statutes as necessary to facilitate employers' "option" to offer the Program. Made other technical and conforming amendments as appropriate.

AB 948 (Gallegos, Chapter 394, Statutes of 1995) established definitions of various employment activities that are considered creditable service and provided that the earnings limitation on postretirement service is applied only to compensation earned from creditable service.

AB 1298 (Ducheny, Chapter 592, Statutes of 1995) authorized CalSTRS to establish a Cash Balance retirement program administered by CalSTRS for part-time public school employees, which employers may elect to provide for persons employed less than half time at a contribution rate that is lower than Social Security tax. Note: The Internal Revenue Service has expressly ruled that the CalSTRS CB Benefit Program qualifies as an alternative retirement plan to Social Security.

## PROGRAM BACKGROUND

CalSTRS has provided education to employers in the past on what is needed in order for a position to be creditable to CalSTRS. If CalSTRS discovers that an individual has not performed creditable service, the system requires employers to re-report that service to the appropriate retirement system, and contributions received would be returned to the employer. Employers and constituent groups claim that service is being misreported because the credential requirements are confusing, and some of the activities listed in the law are vague. Those groups recommend CalSTRS should, consequently, broaden the definition of “creditable service” to allow certain positions, which they believe are generally performing activities included in the definition of “creditable service,” to be reported to and accepted by the system.

Additionally, when documentation is reviewed for a partial certificated position, current law is not clear on how that entire position should be credited to CalSTRS or another public retirement system. Instead of an employee’s contributions going to one retirement system, an individual’s contributions may be split between multiple retirement systems, which slows service credit accrual in any one retirement system. Furthermore, the Education Code does not specify that 100 percent of the activities performed in a position must meet the definition of “creditable service.”

Compensation earnable is reported by employers and is used to calculate final compensation and determine service credit. When reporting a compensation earnable for outgrowth activities, employers have limited visibility of whether a member performed creditable service in prior months. For large population employers, this can create a huge manual workload each month. Additionally, while the employer may have been reporting the lowest pay rate accurately throughout the year, the employer would have to make reporting adjustments if a member takes a position with a lower pay rate later that year.

## FISCAL IMPACT

Program Costs/Savings – There would likely be a de minimis impact to the fund because the full contributions for the service were paid even though the service was not creditable under current law.

Administrative Costs/Savings – Technology costs are estimated at below \$100,000 with an effort that may take up to six months related to returning any contributions to the employer and assuming standard processes for reversing contribution lines. Allowing individuals erroneously reported to CalSTRS the option to stay in the system avoids the need to process re-reporting of service that was not creditable. Other administrative costs and anticipated increase in workload are absorbable.

## SUPPORT

CalSTRS (Sponsor)  
Alliance of Schools for Cooperative Insurance Programs  
Association of California Community College Administrators  
Association of California School Administrators  
Association of Chief Business Officials

Association of Chief Human Resources Officers/Equal Employment Officers  
California Association of School Business Officials  
California Teachers Association  
California Retired Teachers Association  
Community College League of California  
Foothill-De Anza Community College District  
North Orange County Community College District  
Los Angeles Community College District  
Los Rios Community College District  
Riverside Community College District  
Riverside County Superintendent of Schools  
Santa Clarita Community College  
Shasta-Tehama-Trinity Joint Community College District  
Siskiyou Joint Community College District  
South Orange County Community College District  
Statewide Association of Community Colleges  
West Kern Community College District  
2 Individuals

## **OPPOSITION**

None known.

## **ARGUMENTS**

Pro: Addresses the problem of employers misreporting employees or compensation earnable for outgrowth activities to CalSTRS.

Provides employers with clarity on what is and what is not creditable service.

Allows positions in which creditable service is performed for more than 50 percent of full time to be reported as creditable to CalSTRS, whether individuals in such positions are performing service on a part-time or full-time basis.

Con: Creates an exception for individuals who were misreported.

Does not hold employers responsible for prior erroneous reporting.

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